

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

HERMAN LEWIS,)	NO. CV-11-324-JPH
)	
Petitioner,)	ORDER ADOPTING REPORT
)	AND RECOMMENDATION TO
vs.)	DENY MOTION FOR APPOINTMENT
)	OF COUNSEL
SCOTT FRAKES,)	
)	
Respondent.)	

BEFORE THE COURT for resolution is the report entered on June 15, 2012, **ECF No. 19**, recommending that Petitioner's motion for appointment of counsel be **denied**.

On June 25, 2012, Petitioner filed objections alleging denial of appointment of counsel is a denial of his right to due process of law, and re-raising the issues presented in the petition for writ (failing to instruct the jury on the elements of kidnapping violated due process protections), **ECF No. 21**. Petitioner's objections cite *State v. Smith*, 131 Wn.2d 258, 263 (1997)(trial is unfair if jury must guess at the meaning of an essential element of a crime or if the jury might assume that an essential element need not be proved)(internal citation omitted); *State v. Stearns*, 119 Wn.2d 247, 250 (1992); RAP 2.5(a)(3)(appellate courts generally will review only those issues properly raised in the

1 trial court; manifest error affecting a constitutional right is an
2 exception)(internal citation omitted); and *State v. Miller*, 156
3 Wn.2d 23, 27 (2005)(WA supreme court reviews questions of law and
4 jury instructions de novo), ECF No. 21 at 1-2.

5 Petitioner restates the issues raised in the petition as
6 reasons the Court should appoint counsel (insufficient evidence of
7 attempt to abduct, ineffective assistance when counsel failed to
8 request instruction defining kidnapping and presented insanity
9 rather than diminished capacity defense), ECF No. 21 at 3-4.

10 After review the Court agrees with the Magistrate Judge that
11 Petitioner is not entitled to appointed counsel because he fails
12 to present circumstances indicating that appointed counsel is
13 necessary to prevent due process violations. See *Chaney v. Lewis*,
14 801 F.2d 1191 (9th Cir. 1986), nor has he shown the interests of
15 justice so requires, 18 U.S.C. § 3006A(a)(2)(B).

16 Accordingly, **IT IS HEREBY ORDERED:**

17 1. The recommendation, **ECF No. 19**, to deny the motion for
18 appointment of counsel is **ADOPTED in its entirety**.

19 2. The Motion, **ECF No. 18**, is **DENIED**.

20 **IT IS SO ORDERED**. The District Court Executive is directed to
21 enter this Order and forward copies to the parties

22 DATED this 27th day of June, 2012.

23
24 s/Robert H. Whaley
25 ROBERT H. WHALEY
UNITED STATES DISTRICT JUDGE

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